

REMARKS

The last Office Action of May 8, 2006, has been carefully considered. Reconsideration of the final rejection is respectfully requested in view of the following remarks.

Claims 1-12 are pending in the application. No claim has been amended or canceled. No amendment to the specification has been made. No fee is due.

Claims 1-9 and 12 stand rejected under 35 U.S.C. §102(b) as being anticipated by Pettersson, U.S. Pat. No. 5,505,004.

Claims 10 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pettersson '004 in view of Pettersson, U.S. Pat. No. 5,287,629.

REJECTION UNDER 35 U.S.C. §102(b)

The rejection under 35 U.S.C. §102(b) is respectfully traversed.

The Examiner interprets the Pettersson '004 patent as disclosing primary crossbeams (5, 11) (FIGS. 1, 3a, and 6) disposed between respective movable support elements (6, 7-9) supporting the machine, rigid secondary crossbeams 4, 12 extending parallel to the respective primary crossbeam and disposed between the support elements (6, 7-9). Also disclosed, according to the Examiner, is a measuring probe 1 connected to the respective primary crossbeam to measure bending of the primary crossbeam relative to the secondary crossbeam.

In response to Applicant's arguments presented in Applicant's Response filed April 5, 2006, the Examiner takes the position that element 5 in Pettersson '004 represents Applicant's primary crossbeam, and that support elements 6 are "deflectable and deformable." However, Applicant wishes to point out that the support elements recited in claim 1 are movable, which according to common use of the English language is different from either *deflectable* or *deformable*.

According to Webster's Unabridged Dictionary, second edition, the word "movable" refers to something "that can be moved from one place to another; transportable." Conversely, "deflectable" indicates "capable of being deflected, i.e., turned aside, or from a direct line or course." Moreover, "deformable" indicates "capable of being deformed, or changed in shape, as by pressure, etc."

Also, MPEP 2111.01 explicitly states:

"[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Phillips v. AWH Corp.*, ___F.3d___, 75 USPQ2d 1321 (Fed. Cir. 2005) (en banc). < *Sunraced Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003)("In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art."). It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the "ordinary" and the "customary" meaning of the terms in the claims. *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003) (Dictionary definitions were used to determine the ordinary and customary meaning of the words "normal" and "predetermine" to those skilled in the art. In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.) *E-Pass Technologies, Inc. v. 3Com Corporation*, 343 F.3d 1364, 1368, 67 USPQ2d 1947, 1949 (Fed. Cir. 2003) (Where no explicit definition for the term "electronic multi-function card" was given in the specification, this term should be given its ordinary meaning and broadest reasonable interpretation; the term should not be limited to the industry standard definition of credit card where there is no suggestion that this definition applies to the electronic multi-function card as claimed, and should not be limited to preferred embodiments in the specification.).

The ordinary and customary meaning of a term may be evidenced by a variety of sources, **>*Phillips v. AWH Corp.*, ___F.3d___, 75

USPQ2d 1321 (Fed. Cir. 2005) (*en banc*),< including: the claims themselves, *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999); dictionaries and treatises, *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1818 (Fed. Cir. 2002); and the written description, the drawings, and the prosecution history, see, e.g., *DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1324, 57 USPQ2d 1889, 1894 (Fed. Cir. 2001). If extrinsic reference sources, such as dictionaries, evidence more than one definition for the term, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with applicant's use of the terms. *Brookhill-Wilk 1*, 334 F. 3d at 1300, 67 USPQ2d at 1137. Furthermore, the specification must be reviewed to determine "whether the presumption of ordinary and customary meaning is rebutted." *Tex. Digital*, 308 F.3d at 1204.

The term "movable" used in the claims is therefore distinct and different from the terms "*deflectable*" or "*deformable*" applied by the Examiner in the rejection of the claims.

The Examiner's response also does not address the claim limitation that "a rigid secondary crossbeam extend[s] substantially parallel to the primary crossbeam," which feature is completely absent from either of the Petterson references. Crossbeam 2 in the '004 patent (the Examiner mistyped this as "6") interpreted by the Examiner as the secondary crossbeam is (see Figs. 1 and 2 of the '004 patent) obviously not parallel to, by perpendicular to, the primary crossbeam 5.

Accordingly, the embodiments disclosed by Petterson '004 at least in Figs. 1 and 2 fail to show the alignment and cooperation between the various elements recited in Applicant's claim 1.

The Examiner then appears to pick and choose from the various drawings in the '004 patent to force a fit to the features recited in claim 1.

For example, the Examiner states on page 4, line 4 from last, of the Office Action: "Also, the leg or support member 9 is 'flexurally rigid' but linearly displaceable in the Y-direction ..." The word "*Also*" implies a relationship or connection between Fig. 6 and Figs. 1 and 2 of the '004 patent, which does not

exist. The Examiner then inexplicably refers back to the crossbeams 4 and 5, which first of all are not, as discussed above, parallel, and are also not part of the embodiment shown in Fig. 6. Neither Fig. 6 nor the other figures in the '004 patent show mutually parallel crossbeams.

According to MPEP 2131.02, to anticipate a claim, the reference must teach every element of the claim:

"The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Since the Petterson '004 patent fails to disclose all the elements of claim 1 or elements performing a substantially identical function, Applicant respectfully requests that the finality of the rejection of claims 1-9 and 12 as being anticipated by Petterson '004 be withdrawn.

REJECTION UNDER 35 U.S.C. §103(a)

Claims 10 and 11 which depend from claim 1 and therefore contain all the limitations thereof, patentably distinguish over the applied prior art in the same manner as claim 1.

The Petterson '629 patent fails also to disclose any of the elements or features missing from the Petterson '004 patent discussed *supra*.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate conditions for allowance. Accordingly, the Examiner is respectfully requested to withdraw the finality of the rejection of all claims and to pass this application to issue.

Reconsideration and allowance of the present application are respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

Respectfully submitted,

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